

[ G.R. No. L-10126. October 22, 1957 ]

**SALUD VILLANUEVA VDA. DE BATACLAN AND THE MINORS NORMA, LUZVIMINDA, ELENITA, OSCAR AND ALFREDO BATACLAN, REPRESENTED BY THEIR NATURAL GUARDIAN, SALUD VILLANUEVA VDA. DE BATACLAN, PLAINTIFFS AND APPELLANTS VS. MARIANO MEDINA, DEFENDANT AND APPELLANT.**

## **D E C I S I O N**

### **MONTEMAYOR, J.:**

Shortly after midnight, on September 13, 1952, bus No. 30 of the Medina Transportation, operated by its owner, defendant Mariano Medina, under a certificate of public convenience, left the town of Amadeo, Cavite, on its way to Pasay City, driven by its regular chauffeur, Conrado Saylon. There were about eighteen passengers, including the driver and conductor. Among the passengers were Juan Bataclan, seated beside and to the right of the driver, Felipe Lara, seated to the right of Bataclan, another passenger apparently from the Visayan Islands whom the witnesses just called Visaya, apparently not knowing his name, seated on the left side of the driver, and a woman named Natalia Villanueva, seated just behind the four last mentioned. At about 2:00 o'clock that same morning, while the bus was running within the jurisdiction of Imus, Cavite, one of the front tires burst and the vehicle began to zig-zag until it fell into a canal or ditch on the right side of the road and turned turtle. Some of the passengers managed to leave the bus the best way they could, others had to be helped or pulled out, while the three passengers seated beside the driver, named Bataclan, Lara and the Visayan and the woman behind them named Natalia Villanueva, could not get out of the overturned bus. Some of the passengers, after they had clambered up to the road, heard groans and moans from inside the bus, particularly, shouts for help from Bataclan and Lara, who said that they could not get out of the bus. There is nothing in the evidence to show whether or not the passengers already free from the wreck, including the driver and the conductor, made any attempt to pull out or extricate and rescue the four passengers trapped inside the vehicle, but calls or shouts for help were made to the

houses in the neighborhood. After half an hour, came about ten men, one of them carrying a lighted torch made - of bamboo with a wick on one end, evidently fueled with petroleum. These men presumably approached the overturned bus, and almost immediately, a tierce fire started, burning and all but consuming the bus, including the four passengers trapped inside it. It would appear that as the bus overturned, gasoline began to leak and escape from the gasoline tank on the side of the chassis, spreading over and permeating the body of the bus and the ground under and around it, and that the lighted torch brought by one of the men who answered the call for help set it on fire.

That same day, the charred bodies of the four doomed passengers inside the bus were removed and duly identified, specially that of Juan Bataclan. By reason of his death, his widow, Salud Villanueva, in her name and in behalf of her five minor children, brought the present suit to recover from Mariano Medina compensatory, moral, and exemplary damages and attorney's fees in the total amount of P87,150. After trial, the Court of First Instance of Cavite awarded P1,000 to the plaintiffs, plus P600 as attorney's fee, plus P100, the value of the merchandise being carried by Bataclan to Pasay City for sale and which was lost in the fire. The plaintiffs and the defendants appealed the decision to the Court of Appeals, but the latter court endorsed the appeal to us because of the value involved in the claim in the complaint.

Our New Civil Code amply provides for the responsibility of a common carrier to its passengers and their goods. For purposes of reference, we are reproducing the pertinent codal provisions:

“Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods Is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756,”

“Art. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the , utmost diligence of very cautious persons, with a due regard for all the circumstances.”

“Art. 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.”

“Art. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former’s employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.”

“Art. 1763. A common carrier is responsible for injuries suffered by a passenger on account of the wilful acts or negligence of other passengers or of strangers, if the common carrier’s employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission,”

We agree with the trial court that the case involves a breach of .contract of transportation for hire, the Medina Transportation having undertaken to carry Bataclan safely to his destination, Pasay City, We also agree with the trial court that there was negligence on the part of the defendant, through his agent, the driver Saylon. There is evidence to show that at the time of the blow out, the bus was speeding, as testified to by one of the passengers,

and as shown by the fact that according to the testimony of the witnesses, including that of the defense, from the point where one of the front tires burst up to the canal where the bus overturned after zigzagging, there was a distance of about 150 meters. The chauffeur, after the blow-out, must have applied the brakes in order to stop the bus, but because of the velocity at which the bus must have been running", its momentum carried it over a distance of 150 meters before it fell into the canal and turned turtle.

There is no question that under the circumstances, the defendant carrier is liable. The only question is to what degree. The trial court was of the opinion that the proximate cause of the death of Bataclan was not the overturning of the bus, but rather, the fire that burned the bus, including himself and his co-passengers who were unable, to leave it; that at the time the fire started, Bataclan, though he must have suffered physical injuries, perhaps serious, was still alive, and so damages were awarded, not for his death, but for the physical injuries suffered by him. We disagree. A satisfactory definition of proximate cause is found in Volume 38, pages 695-696 of American Jurisprudence, cited by plaintiffs-appellants in their brief. It is as follows:

"\* \* \* 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.' And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting- the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."

It may be that ordinarily, when a passenger bus overturns, and pins down a passenger, merely causing him physical injuries, if through some event, unexpected and extraordinary, the overturned bus is set on fire, say, by lightning, or if some highwaymen after looting the vehicle sets it on fire, and the passenger is burned to death, one might still contend that the proximate cause of his death was the fire and not the overturning of the vehicle. But in the

present case and under the circumstances obtaining' in the same, we do not hesitate to hold that the proximate cause of the death of Bataclan was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was a natural sequence of the overturning of the bus, the trapping of some of its passengers and the call for outside help. What is more, the burning of the bus can also in part be attributed to the negligence of the carrier, through its driver and its conductor. According to the witnesses, the driver and the conductor were on the road walking back and forth. They, or at least, the driver should and must have known that in the position in which the overturned bus was, gasoline could and must have leaked from the gasoline tank and soaked the area in and around the bus, this aside from the fact that gasoline when spilled, specially over a large area, can be smelt and detected even from a distance, and yet neither the driver nor the conductor would appear to have cautioned or taken steps to warn the rescuers not to bring the lighted torch too near the bus. Said negligence on the part of the agents of the carrier come under the codal provisions above-reproduced, particularly, Articles 1733, 1759 and 1763.

As regards the damages to which plaintiffs are entitled, considering the earning capacity of the deceased, as well as the other elements entering into a damage award, we are satisfied that the amount of Six Thousand (P6,000) Pesos would constitute satisfactory compensation, this to include compensatory, moral, and other damages. We also believe that plaintiffs are entitled to attorney's fees, and assessing the legal services rendered by plaintiffs' attorneys not only in the trial court, but also in the course of the appeal, and not losing sight of the able briefs prepared by them, the attorney's fees may well be fixed at Eight Hundred (P800) Pesos. The award made by the trial court of One Hundred (P100) Pesos for the loss of the merchandise carried by the deceased in the bus, is adequate and will not be disturbed.

There is one phase of this case which disturbs if it does not shock us. According to the evidence, one of the passengers who, because of the injuries suffered by her, was hospitalized, and while in the hospital, she was visited by the defendant Mariano Medina,

and in the course of his visit, she overheard him speaking to one of his bus inspectors, telling said inspector to have the tires, of the bus changed immediately because they were already old, and that as a matter of fact, he had been telling the driver to change the said tires, but that the driver did not follow his instructions. If this be true, it goes to prove that the driver had not been diligent and had not taken the necessary precautions to insure the safety of his passengers. Had he changed the tires, specially those in front, "with new ones, as he had been instructed to do, probably, despite his speeding, as we have already stated, the blow out would not have occurred. All in all, there is reason to believe that the driver operated and drove his vehicle negligently, resulting in the death of four of his passengers, physical injuries to others, and the complete loss and destruction of their goods, and yet the criminal case against him, on motion of the fiscal and with his consent, "was provisionally dismissed, because according to the fiscal, the "witnesses on whose testimony he was banking to support the complaint, either failed to appear or were reluctant to testify. But the record of the case before us shows that several witnesses, passengers in that bus, "willingly and unhesitatingly testified in court to the effect that the said driver was negligent. In the public interest, the prosecution of said erring driver should be pursued, this, not only as a matter of justice, but for the promotion of the safety of passengers on public utility buses. Let a copy of this decision be furnished the Department of Justice and the Provincial Fiscal of Cavite.

In view of the foregoing, with the modification that the damages awarded by the trial court are increased from One Thousand (P1,000) Pesos to Six Thousand (P6,000) Pesos, and from Six Hundred Pesos to Eight Hundred (P800) Pesos, for the death of Bataclan and for attorney's fees, respectively, the decision appealed from is hereby affirmed, with costs.

*Paras, C.J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.*

*Judgment affirmed with modification.*